

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

GREGG SMITH,

Plaintiff,

v.

Case No. 2:10-cv-00919

DAVID BALLARD¹,
Warden, Mount Olive
Correctional Complex,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

On July 16, 2010, the Clerk received a letter from Plaintiff, an inmate at Mount Olive Correctional Complex, in which he expresses his frustration that he has been trying to file a civil rights complaint, but that prison staff "has repeatedly destroyed, damaged or taken my forms, notes and letters." (Docket # 1, at 1.) Plaintiff claims that he is suffering from retaliation, including physical abuse, and that prison staff withholds food and medical care from him. Id. He asks the Court to send him civil rights complaint forms, a copy of the Local Rules, and U.S. Marshals Service forms. Id.

By letter dated July 19, 2010, the Clerk acknowledged Plaintiff's letter, advised him that it had been docketed as a

¹ The Clerk supplied the name of this defendant; Plaintiff did not file a formal complaint and he did not name a particular person as a defendant.

civil action, enclosed the appropriate forms, and instructed Plaintiff to complete, sign and return the forms to the Clerk within 30 days. (# 2.)

Since the July 19, 2010 letter to Plaintiff, the Clerk has received nothing from him and it appears that he is no longer interested in filing suit. Accordingly, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall

constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Chief Judge Goodwin.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff.

October 19, 2010

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge